IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 440 OF 2000

RAMNATH @ RAMU RAMBACHHAN)
GUPTA, At present Yeravada)
Central Prison, PUNE-411 006.) ..APPELLANT

Versus

THE STATE OF MAHARASHTRA) RESPONDENT

W I T H

CRIMINAL APPEAL NO. 471 OF 2001

MRS. MANJU RAMNATH GUPTA)
Yeravada Ladies Prison,)
PUNE 411 006.) APPELLANT

VERSUS

THE STATE OF MAHARASHTRA) RESPONDENT

Ms. D. M. Shah, Advocate appointed for appellants
Mr. D. R. More, APP

CORAM:-SMT. RANJANA DESAI &
D. G. KARNIK, JJ.

DATE ON WHICH THE JUDGMENT
RESERVED : 5TH APRIL, 2006

DATE ON WHICH THE JUDGMENT

PRONOUNCED:19th_APRIL, 2006

JUDGMENT:-(Smt. Ranjana Desai, J.)

. Criminal Appeal No. 440 of 2000 is filed by Ramnath @ Ramu Rambachhan Gupta, original accused 1 ("A-1" for short) and Criminal Appeal No. 471 of 2001 is filed by Mrs. Manju Ramnath Gupta, original accused 2 ("A-2" for short). A-1 and A-2 were tried in Sessions Case No. 418 of 1998 by the Court of Sessions for Greater Mumbai, for offences under Sections 302, 394 and 397 read with 34 of the Indian Penal Code ("I.P.C." for short). It would be advantageous to give a gist of the prosecution story.

2. PW 1 Ajaykumar Dharampal Rakhare and PW 5 Shaktisingh Dharampal Rakhare are the brothers of deceased Vijay. PW 3 Smt. Sushila Bhimsen Dingra is the mother-in-law of the deceased. She is also the mother-in-law of PW 1 Ajaykumar. Wife of the deceased and wife of PW 1 Ajaykumar are sisters. The deceased was married to the daughter of PW 3 Sushila in 1987. They were staying in Block No. 5, Laxmi Apartment, Station Road, Vikhroli, Mumbai.

3. Deceased Vijay has a workshop called "Vijay Gears" situated at Kartar Compound, Behind State Bank, Vikhroli. This workshop is near his residence. PW 5 Shaktisingh, the brother of the deceased was staying in flat No. 4 of the same Laxmi Apartment at Vikhroli in which the flat of the deceased is situated. Shaktisingh's flat is adjacent to the flat of the deceased.

4. According to the prosecution the deceased was staying alone in his flat because his wife was abroad and his kids were staying with his mother-in-law, PW 3 Sushila. A-2 used to visit him regularly. PW 2 Virendra Saroj was wroking with the deceased at his workshop. He had gone to the deceased's workshop on 28/12/97. He was with the deceased at 8 p.m. on 28/12/97. At that time A-2 had collected keys of the flat from the deceased.

5. On 29/12/97, PW 2 Virendra went to the workshop at 8 a.m. He found it locked. He waited for about two hours. Since the deceased did not return he went to PW 3 Sushila's house. She asked him to wait. He again went to the workshop at 8 a.m. on 30/12/97. The deceased was not there. He went to the residence of the deceased. It was locked. He

found that the tubelight and the fan in the flat were on. PW 3 Sushila was contacted. After sometime PW 3 Sushila came to the factory along with PW 1 Ajaykumar. Then they went to PW 5 Shaktisingh, the brother of the deceased. From there they went to Vikhroli police station.

6. PW 1 Ajaykumar reported at Vikhroli Police Station that his brother Vijay had not reported for his work; that his flat was locked from outside and that the fan and the light inside the flat were on. PW 16 PSI Yedake, who was on duty made the necessary station diary entry. They went to the flat. The lock was broke open. The deceased was lying in a pool of blood. PSI Yedake recorded the First Information Report ("F.I.R." for short) of PW 1 Ajaykumar which is at Exhibit-6. On the basis of the F.I.R. investigation was started. The accused came to be arrested at Ulhasnagar. On 31/12/97 at the instance of A-1, razor Article-6 and a key Article-9 were recovered. At the instance of A-2 blood-stained clothes of the accused were recovered. The articles belonging to the deceased were seized under panchnama from the accused. They were identified as articles belonging to the deceased and his wife by PW 3 Sushila.

Identification parade was held by PW 10 Bhaskar Namdeo Kharale in which PWs 2 and 5 identified A-2. Postmortem was done on the deceased. After completion of the investigation the accused came to be charged as aforesaid.

7. In support of its case the prosecution examined as many as 18 witnesses. Prosecution examined PW 1 Ajaykumar and PW 5 Shaktisingh who are brothers of the deceased and PW 3 Sushila who is the mother-in-law of the deceased. PW 2 Virendra Saroj the employee of the deceased was also examined. PW 10 Bhaskar Kharale is the Special Executive Magistrate who conducted the identification parade. PW 11 Dr. Hankakre proved the postmortem notes. P-17 Hemchandra Ganpatrao Bane is a finger print expert. Details of investigation have been given by PW 14 PSI Shashikant Dattatray Dasurkar, PW 15 PSI Janardhan Rakhama Thorat, PW 16 Namdeo Yedake and PW 18 Vilas Kisan Pole.

8. The accused claimed to be innocent. According to A-1 investigating officer is a friend of Shiv Sena Corporator of Ulhasnagar. He is on visiting terms with Rajendrasingh Bhullar @ Maharaj. According to him some days prior to Christmas 1997,

he was in Jyoti Restaurant at Ulhasnagar with A-2 They wanted to see the movie Shapath. They were to go for the last show. At that time water fell down on his clothes and therefore, there was altercation between him and the officer and his friend. He, therefore, felt that some problem was growing and, therefore, he sent his wife home. After she went out he was abused and threatened by the officer. The officer took him to the office of Bhullar. There he was assaulted. He was told that he would be made a scapegoat by the said politician and the said officer. According to him he thereafter went home to call his wife. According to him he and A-2 had got married without the consent and knowledge of their parents and on account of that they were at the receiving end from the family and the others. According to him police have falsely implicated him.

9. A-2 has, however, stated that she did not know about the fight, if any between her husband and the officer. According to her she was not present at that time and that she had not accompanied him to the movie. A-2 claimed to be innocent.

10. After perusing the evidence on record the

learned Sessions Judge came to a conclusion that the prosecution had proved its case beyond reasonable doubt. He, therefore, convicted the accused under Section 302 read with 34 of the I.P.C. and sentenced them to suffer R.I. for life. He also found them guilty of the offence under Section 394 read with 34 of the I.P.C. and sentenced them to to suffer R.I. for life. The accused were also convicted and sentenced under Section 397 of the I.P.C. and sentenced to suffer R.I. for seven years. The substantive sentences were ordered to run concurrently. Being aggrieved by the said judgment and order, the accused have preferred the instant appeals.

11. We have heard at considerable length Ms. Shah, learned counsel appearing for the accused and Mr. More, the learned APP appearing for the State. With the assistance of the learned counsel, we have gone through the evidence and the record.

12. Ms. Shah, the learned counsel for the appellants/accused contended that the learned Sessions Judge erred in convicting both the accused for offences under Section 302, 394 and 397 read with 34 of the I.P.C., when there is absolutely no

evidence on record to establish their involvement in the said offences. She submitted that there is no credible evidence on record to establish that the accused were last seen with the deceased. The evidence of PW 2 Virendra Saroj that he saw A-2 taking key from the deceased at 8 p.m. on 28/12/97 is not truthful. It is obviously a story created by the police to establish presence of A-2 in the house of the deceased. Ms. Shah contended that according to the prosecution the house was locked on 28/12/97. Assuming A-2 had gone to the house of the deceased on 28//12/97, there is no evidence on record to establish that it is she who killed the deceased with A-1. There is no evidence to indicate as to when both the accused came out. She submitted that PW 5 Shaktisingh's house is just adjacent to the house of the deceased. If for three days light and fan were on and the house was locked it is inconceivable that the brother of the deceased would not enquire as to why the light and the fan are on when the house is locked. He would certainly find out whether his brother is inside or not. According to the learned counsel this is a lacuna in the prosecution story which makes it suspect.

13. Ms. Shah then contended that according to the prosecution the police broke open the flat . The lock was cut. It is admitted by the investigating officer that the lock is not traceable. The alleged recovery of key at the instance of A-1 does not inspire confidence as it is from an open place. Besides, if the lock was not recovered it would be difficult to say that it is the same key which was allegedly handed over by the deceased to A-2.

14. Ms. Shah pointed out that the accused were arrested on 31/12/97 at Ulhasnagar between 10-35 to 11-35 in the morning. According to PW 13 Krishkant Ramdeo Yadav who is a pancha to Exh.-25 which is the panchnama under which photographs of the finger prints found in the house of the deceased were taken, this panchnama was recorded between 2-10 p.m. and 2-15 p.m. Miss Shah contended that there was sufficient time for the police to take the accused who were arrested between 10-35 to 11-35 in the morning of 31/12/97 at Ulhasnagar to Vikhroli at about 2-10 p.m. and plant their finger prints in the house of the deceased. She submitted that the case of the accused that they were taken to the house of the deceased and their finger prints were planted in that house is probabilised. The

evidence of finger print expert, therefore, needs to be rejected.

15. Miss Shah also contended that alleged finding of blood on the clothes of the accused recovered at the instance of A-2 also does not help the prosecution. She submitted that the said discovery is a got up discovery. In any case the chemical analyser's report states that the result of the test conducted to find out the blood group was inconclusive. Therefore, this circumstances is of no use to the prosecution. Miss Shah contended that seizure of articles allegedly belonging to the deceased must also be kept out of consideration. She submitted that there are no specific identification marks on the articles recovered and, therefore, it is not understood as to how PW 3 Sushila could have identified those articles. Ms. Shah contended that in any event even if it is assumed that the said articles were seized from the accused, the accused could at the most be convicted for offence under Section 411 of the I.P.C. and certainly not for offence under Section 302 or 394 and 397 of the I.P.C. because there is complete absence of any evidence to connect the accused with the said offences.

16. Mr. More, the learned APP on the other hand submitted that the prosecution has proved its case beyond reasonable doubt. The chain of circumstances is complete and it points unerringly to the guilt of the accused and no other hypothesis but that of the guilt of the accused is possible in the facts of this case. He submitted that the finger print experts' opinion clinches the issue. The Chemical Analyser's report indicating that human blood was found on the clothes of the accused discovered at the instance of A-2 is another circumstance which establishes the involvement of the accused in the murder. Relationship between the deceased and A-2 is established by the evidence of the prosecution witnesses. Finding of articles belonging to the deceased with the accused is yet another incriminating circumstance. The learned counsel contended that, therefore, there could be no doubt about the involvement of the accused in the crime in question and hence no interference is necessary with the impugned judgment and order.

17. The fact that the death of deceased Vijay was homicidal is not disputed. PW 11 Dr. Hankare, who did postmortem on the deceased has proved the

postmortem notes. The deceased had received following injuries;

1. I.W. obliquely placed at the lateral side of the left eye brow 4 xl cm bone deep with surrounding redinium sharp on both the edges;

2. I.W. below above injury on the left cheek oblique 1 x 1 x muscle deep, sharp edges on both sides.

3. I.W. on chin interior side, horizontal to the left side 3 x 1 cm x muscle deep.

4. Horizontal I.W. on the neck in the neck creners 18 x 2 x deep upto the anterior surface of the spine cutting larynx just above the cricid cartilage through through alongwith oesophagus cardid, anterior and vein.

5. Contusion on sternum at the sternal angle 4 x 2 cm bluish discolourisation.

6. Contusion medial aspect of left thigh 21 x 1 cm.

18. According to Dr. Hankare the cause of death was cut neck injury causing haemorrhage and asphyxia. The fact that the deceased was found lying naked in an injured condition covered with the blanket in his flat at Vikhroli is also not disputed by the defence.

19. PW 2 Virendra Saroj is an employee of the deceased. He was working in the deceased's workshop known as Vijay Gears situated at Vikhroli. This workshop is near the house of the deceased. It is Virendra, who contacted the mother-in-law of the deceased after realising that something was wrong. He has stated that he had gone to his workshop on 28/12/97 and he was with the deceased till 8 p.m. on that day. At about 8 p.m. one Manju whom he identified as A-2 came to the deceased, collected keys from him and went to his residence alone. He has stated that A-2 used to visit the deceased once or twice in a month and the visits started during 1996-97. According to Virendra on 29/12/97 he found the workshop locked. The workers waited there. However, as the deceased did not come they went to PW 3 Sushila's house. She asked them to wait. The workers again went to the workshop at 8 a.m. on 30/12/97. Since the

deceased was not there Virendra went to his residence. He found the door locked. However, he found that the tube and the fan were on. He returned to the factory and told his brother to contact PW 3 Sushila. PW 3 Sushila was contacted and after sometime she came with PW 1 Ajaykumar to the factory. They went to PW 5 Shaktisingh, brother of the deceased. Then they went to the police station. They took the police to the residence of the deceased. The police broke open the lock. They found the deceased lying in an injured condition under a blanket in the flat. He was totally naked.

20. In the identification parade he identified A-2 as the lady who used to visit the deceased. This witness has been cross-examined at length. He has denied the suggestion that A-2 never visited the residence of the deceased. The defence has not been able to make any dent in the evidence of this witness in the cross-examination. From the evidence of this witness the prosecution has established that A-2 used to visit the deceased. She collected keys from the deceased at 8 p.m. on 28/12/97 and went to the residence of the deceased alone.

21. PW 3 Sushila is the mother-in-law of the deceased and also the mother-in-law of PW 1 Ajaykumar, who is the brother of the deceased. She has stated that Vidya i.e. the wife of the deceased had gone to Kuwait for a job in or about 1994-95 and she returned on or about 17th January, 1998 i.e. after the incident in question. According to her the deceased dropped her at Shivaji Talao on his scooter and told her that he was leaving for Vikhroli. Sushila has supported PW 2 Virendra's version that on 29/12/97 she was informed by a worker that the deceased had not opened his workshop and that she told him to wait. Sushila has further stated that on 30/12/97, the workers found the workshop locked and, therefore, they contacted her at 9 a.m. and told her that the light and the fan were on in the house. She has further stated that PW 1 Ajaykumar came to her house at about 9-30 a.m. on 30/12/97. She told him what the workers had told him. Thereafter according to Sushila she and PW 1 Ajaykumar went to PW 5 Shaktisingh. They noticed that the light and fan were on in the house of the deceased. PW 1 Ajaykumar, therefore, went to the police. The police went to the house of the deceased. The lock

was cut. They entered the house and found the deceased lying on the cot under blanket in an injured condition. On 1/1/98 she was called to the police station for identifying the ornaments of her daughter. She identified the ornaments of her daughter and the watch belonging to the deceased at the police station. This witness has been cross-examined. She has not deviated from her version in the examination-in-chief in the cross-examination. We find her to be a reliable witness.

22. PW 1 Ajaykumar, the brother of the deceased has stated that on 30/12/97 he had gone to the Vikhroli Park Site police station to report about missing of his brother as his brother had not come to the workshop for a couple of days. His complaint was recorded by the police. He has stated that he accompanied the police to the house of his brother. The police broke open the lock. According to Ajay Kumar as they entered the house they found that his brothers neck was slit and he was lying under a blanket on a cot. This witness has stood firm in the cross-examination.

23. PW 5 Shaktisingh is the elder brother of the

deceased. He has stated that the wife of the deceased had gone to Kuwait for job and in the absence of his wife two/three girls used to visit the deceased at his house. He has stated that the deceased was staying near his house. In the court he identified A-2 as the girl who used to visit the deceased during 1996-97. He has stated that the deceased used to come around midnight and leave early morning. He has further stated that on 11/3/98 he was called to Arthur Road jail for identification parade and he identified A-2 as the girl who used to visit the deceased. He has been cross-excamined as regards identification of A-2 made by him in the identification parade. There is no reason to disbelieve this witness as in his cross-examination nothing has been elicited by the defence to make him an unreliable witness. He has stated that he was staying adjacent to the deceased. It is admitted by the defence that the deceased was staying in Flat No. 5 and this witness is staying in flat No. 4 of Laxmi Apartment at Vikhroli. If he was an immediate neighbour of the deceased, his claim that he had seen A-2 visiting the deceased will have to be accepted. From the evidence of this witness it is clear that after the deceased’s wife went to Kuwait

the deceased was having relations with A-2. She used to visit his house around midnight and leave it early morning. This lends support to the evidence of PW 2 Virendra that on 28/12/97 at 8 p.m. A-2 had taken key from the deceased and had gone to his flat and that A-2 used to visit the deceased during 1996-97. The evidence of this witness was attacked on the ground that if the prosecution's case that the light and fan in the house of the deceased were on from 28/12/97 till 30/12/97 when PW 3 Sushila and others went to the house of the deceased is true being a next door neighbour and brother of the deceased this witness ought to have noticed this fact and contacted the police. It is inconceivable that he would not notice that his brother's house was locked from outsdide and the fan and the lights were on for three days. Though this argument is advanced in this court, this witness was not cross-examained by the defence on this point. If he were to be confronted with this he would have given explanation as to why he did not try to contact the police. From the evidence of this witness it appears that he was not having very close relations with the deceased. He has stated that before marriage his brother was reasonable. He has

further added that after marriage the wife of the deceased went to Kuwait for a job and in her absence two/three girls were visiting the deceased at his place.

24. It appears to us that perhaps because the deceased had gone astray, PW 5 was not having any intimate relations with him. It is possible that therefore, he did not want to be inquisitive and probe into his brother's life. We do not think that the defence can get any mileage from the fact that PW 5 Shaktisingh did not notice that the fan and the light in the house of the deceased were on for three days. If the defence wanted to take advantage of this, the defence ought to have asked question to PW 5 Shaktisingh in this connection. Besides the situation of flat Nos. 4 and 5 has also not been brought on record. It is not possible for us to imagine whether the flats were so situated that PW 5 Shaktisingh could have easily noticed that the light and fan in the house of the deceased were on for three days. This submission, therefore, will have to be rejected.

25. The evidence of PW 2 Virendra, PW 3 Sushila and PW 5 Shaktisingh establishes that there was

some relationship between the deceased and A-2 and evidence of PW 2 Virendra establishes that A-2 had taken keys from the deceased on 28/12/97 at 8 p.m. and had gone to the flat of the deceased.

26. It is an admitted position that A-1 is the husband of A-2. PW 7 William John Pinto is a pancha of Memorandum Exh.-15 and panchnama Exhibit -15A. He has stated that on 1/1/98 at about 11-45 p.m. the accused made a voluntary statement and agreed to show a razor which he had kept. He led the police to Gautam Nagar Zhopadpatti, Ulhasnagar and from the hut he took out razor Article 6. The said razor had blood-stains on it.

27. It is pertinent to note that when PW 11 Dr. Hankare was shown this razor, he stated that the injuries sustained by the deceased were possible by razor Article 6. The chemical analyser’s report indicates that the razor was stained with human blood. Discovery of the weapon of assault at the instance of A-1 is an incriminating circumstance sofar as A-1 is concerned.

28. PW 8 Ramprasad Ramgopal Upadhyay is a pancha to panchnama Exhibit-17A. He has stated that on

2/1/98 at about 4-40 p.m. A-2 made a statement that she would produce her clothes as well as clothes of A-1. She led the police to Gautam Nagar Zopadpatti at Ulhasnagar. She led them to the premises of Ravi Traders. She removed a tin box and from that she took out a salvar kameez, a dupatta and a pant and a shirt. These clothes were blood-stained.

29. The chemical analyser's report indicates that the clothes were stained with human blood. The finding of blood-stained clothes at the instance of A-2 is one of the many circumstances indicating the complicity of the accused in the crime in question.

30. PW 4 Aruna Sonawane is a pancha to the arrest panchnama of the accused which is at Exhibit 10. She has stated that on 31/12/97 at about 10-30 a.m. she was called by the police near Bank of Baroda Nehru Chowk, Ulhasnagar. The police had in their custody a boy and a girl. She identified them as the accused who were present in the court. She has stated that the police conducted a personal search of the accused in her presence. The police seized from the girl ornaments and wrist watch. The boy was wearing a wrist watch, a yellow bracelet and a

chain. All these articles were taken charge of by the police under panchnama. This witness has proved arrest and seizure panchnama which is at Exhibit 10. She has denied the suggestion that on account of land dispute between her and the accused there was enmity between them and, therefore, she was deposing against the accused. The evidence of these witnesses establishes the seizure of valuables from the accused after their arrest on 31/12/97.

31. In this connection it is now necessary to refer to the evidence of PW 3 Sushila. Sushila stated that on 1/1/98 she was called at the police station for identifying the ornaments of her daughter. She identified two Omex watches, one of which was ladies watch and the other was gent's watch. She also identified two bracelets one of which was yellow and the other was white. She identified one chain and pair of rings. She stated that the ladies watch belonged to her daughter Vidya and the other watch belonged to her son-in-law Vijay, the deceased.

32. She has further stated that the pendent of the chain was heart shaped with 'V' inscribed on it and

it was sent by her daughter for the use of the family. She has further stated that the ladies watch was square shaped with a black dial and the other watch was round and golden. We have no hesitation in relying on identification of ornaments and watches done by PW 3 Sushila. She has every reason to identify the articles. The articles do not appear to be common place articles. One watch was square with a black dial and other watch was round and golden. The pendent of the chain was heart shaped with 'V' inscribed on it. These were, therefore, special features on the basis of which she could have identified these articles. Her identification of ornaments of her daughter also cannot be doubted. PW 15 Janardhan Rakhama Thorat has also supported the fact that on 30/12/97 the accused were arrested near Bank of Baroda at Ulhasnagar and from their persons valuables were seized, under panchnama Exhibit 10. Seizure of articles belonging to the deceased and his family from the accused at the time of arrest of the accused within 3 to 4 days of the incident goes a long way in establishing the prosecution case.

33. It is now necessary to turn to the evidence of

PW 13 Krishkant Ramdeo Yadav who is the pancha to Exhibit 25 under which finger prints found in the flat of the deceased were developed. PW 13 Yadav has stated that on 31/12/97 at 2 p.m. finger print expert PW 7 Bane was present in the flat of the deceased. Bane spread powder and found two finger prints on the table in that flat. A finger print was also found on the drawer of the said table. Bane also found two chance prints on glasses. Totally five prints were taken on that day in the presence of PW 4 Yadav. According to him photographer accompanying the police took the photographs of these prints.

34. PW 14 PSI Shashikant Dattatray Dasurkar has also affirmed that on 31/12/97 finger print expert PW 17 Bane took chance prints from the house of the deceased. He has affirmed that police photographer photographed the chance prints. PW 17 Bane the finger print expert has also deposed as to how he traced out the chance print. He has stated that he asked the police to procure admitted finger prints of the accused. Accordingly the same were supplied to him. According to him out of five chance prints only one was clear and the others were smudged. He got the specimen palm prints photographed and

developed in enlargement for the purposes of comparison. He compared the specimen palm prints and the chance palm prints and found them comparable with the specimen palm print of A-1.

35. The finger print expert's opinion is at Exhibit 36. It states that out of five chance prints one chance palm print developed on sunmica dressing table is identical with the right hand palm print portion on the palm print slip of A-1 received for comparison from the police. Remaining chance prints are unfit for comparison. The finger print expert's opinion establishes the presence of A-1 in the house of the deceased during the relevant period. No dent has been made by the defence in the evidence of finger print expert or in the evidence of pancha PW 13 Yadav or PW 14 Dasurkar soas to persuade us to hold that the prosecution case as regards finding of palm print of A-1 in the house of the deceased is concocted. It was argued that palm print of A-1 has been planted in the house of the deceased. In his 313 statement A-1 has stated that after their arrest the police brought them to Bombay and took them to the scene of offence and forced him to place his hands on a drawer by force and under coercion.

They told A-2 to lift the glass and that is how their impressions have appeared in the flat of the deceased. It was argued by Ms. Shah that the accused were arrested at Ulhasnagar on 13/12/97 between 10-35 to 11-35 in the morning as per panchnama Exhibit-10. Their finger prints and palm prints were developed and photographed in the flat of the deceased on 31/12/97 between 14-10 and 14-50 under panchnama Exhibit 25. She submitted that, therefore, there was sufficient time for the police to take the accused from Ulhasnagar to Vikhroli and plant their thumb impressions and palm impressions in the flat of the deceased.

36. We find no substance in this submission. If at all the police wanted to plant the finger prints or the palm prints of the accused in the flat of the deceased they would have successfully planted the thumb impressions and palm impressions of both the accused. It is pertinent to note that out of five impressions collected by them, the finger print expert could only give opinion about one palm print impression. The prosecution could have easily ensured that not merely palm print impression of A-1 but even thumb impressions of A-1 and A-2 are found in the flat of the deceased.

However out of the five impressions developed by the finger print expert he could give opinion only about one. This is inconsistent with the theory of planting of finger prints and palm prints by the police. We reject this submission of Ms. Shah.

37. The prosecution has come out with a case that at the instance of A-1 a key was recovered from the same building where the flat of the deceased is situated. This key is alleged to have been taken out by A-1 from the 4th floor of the said building from below a tile. It is difficult to rely on this discovery because the key was taken out from an open place which was accessible to the people. Besides the prosecution has admitted that the lock was not traceable. Therefore, even if it is accepted that a key was recovered at the instance of A-1 it is difficult to hold that it is the same key which was taken by A-2 from the deceased on 28/12/97 at 8 p.m. This discovery must, therefore, be kept out of consideration.

38. We are also not impressed by evidence of PW 12 Dr. Upadhya. According to Dr. Upadhya A-1 had come to him on 28/12/97 at 12 noon. A-1 had told him that he was under tension and so unable to

sleep and he requested for sleeping pills. Assuming that to be true, we do not see how A-1's taking sleeping pills from Dr. Upadhya can have anything to do, even remotely with the offence in question.

39. But even if we leave out the alleged finding of key at the instance of A-1 and the evidence of Dr. Upadhya there is sufficient other evidence on record to indicate that the accused had killed the deceased and decamped with the valuables found in the house of the deceased. As we have already noted evidence of PW 2 Virendra and PW 5 Shaktisingh establishes that A-2 had relations with the deceased and she used to regularly visit him. She had in fact taken the keys from him on 28th December, 1997 at 8 p.m. and gone to his house. Finger print expert's evidence establishes that palm print of A-1 was found in the house of the deceased. Therefore, A-1 had also also visited the flat of the deceased during the relevant period. Blood-stained clothes of the accused were found at the instance of A-2. Human blood was detected on those clothes as per the report of the chemical analyser. Razor Article 6 was discovered at the instance of A-1 and human blood was found on the

razor. Valuable articles belonging to the deceased were seized from the accused immediately on their arrest. No explanation has been offered by the accused as to how those articles were found with them.

40. The only logical and legal conclusion from the above circumstances is that it is A-2 who used to regularly visit the deceased, who committed his murder with the help of her husband A-1. They robbed the deceased of his valuables and closed the house and ran away after committing murder and robbery. The light and fan was kept on to create an impression that somebody was there in the flat. The chain of circumstances is complete and unerringly points to the guilt of the accused. There is no false implication as alleged by the accused.

41. In the facts of the case no other inference except that of the guilt of the accused can be drawn. We, therefore, find no merit in these appeals. The appeals are dismissed.

(SMT. RANJANA DESAI,J.)

(D. G. KARNIK, J.)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 440 OF 2000
WITH
CRIMINAL APPEAL NO. 471 OF 2001

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Coram, : Court's or Judge's Orders

Ms. Daksha M. Shah for appellants

Mr. D. R. More, A.P.P.

CORAM: SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED: 19/4/2006

P.C.:-

For the reasons recorded separately in the judgment, this Court has dismissed both the appeals.

(SMT. RANJANA DESAI,J.)

(D. G. KARNIK, J.)